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REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. Claims 1-12 and 15-18 are pending of which claims 1, 8 and 15 are independent. Claims 1-2, 4-5, 7-9, 12, 15 and 16 are currently amended. Claims 13-14 and 19-20 have been cancelled.

Claims 15-18 and 20 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-12 and 15-20 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Moon (U.S. Patent No. 6,970,902).

The above objection and rejection are respectfully traversed for the reasons stated below.

Claim Rejection under 35 U.S.C. §101

Claims 15-18 and 20 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

The Office Action rejected independent claim 15 under §101. The Office Action alleges that independent claim 15 is directed toward "a distribution resource management node" and "a contract generation engine" which are "software *per se*." In addition, the Office Action alleges that §101 requires hardware to be present in independent claim 15 and requires that Applicants limit their specification only to hardware with respect to the description of the claimed elements "distribution resource management node" and "contracted generation engine." However, the Applicants respectfully submit that independent claim 15 recites statutory subject matter. §101 provides:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Clearly, the test for statutory subject matter is therefore whether independent claim 15 is tied to at least one of four statutory classifications of invention, 1) processes, 2) machines, 3) manufactures and 4) compositions of matter. Interpreting §101, the Manual of Patent Examining Procedure (MPEP) mandates that "anything under the sun that is made by man as statutory subject matter." See MPEP §2106, IV, Revision 6, September 2007. Simply the MPEP mandates following the Supreme Court's interpretation of §101. See Diamond v. Chakrabarty, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980).

The Office Action alleges that because "no hardware is present," independent claim 15 is non-statutory under §101. However, independent claim 15 is directed toward "a grid computing system" comprising "a contract repository . . . to store the contract." A grid computing system comprises a grid of computers. Storage requires a memory or some other form of data storage device. Both computers and storage devices are hardware, and claim 15 is tied to the statutory class (*i.e.*, machine) including storage devices and computers. Therefore, independent claim 15 is not merely directed to "a distribution resource management node" and "a contract generation engine." For at least these reasons, independent claim 15 and claims 16-18 and 20 are statutory.

The Office Action further alleges that because the "specification does not limit" the description to hardware for the claimed elements "distribution resource management node" and "contract generation engine," independent claim 15 is non-statutory under §101. However, as demonstrated, independent claim 15 recites "a grid computing system" and "a contract repository . . . to store the contract."

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Claim Rejection under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection

under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed

combination, or the mechanical equivalents thereof functioning in substantially the same way

to produce substantially the same results. As noted by the Court of Appeals for the Federal

Circuit in Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co., 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection

under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference
> disclosure of each and every element of the claimed invention,
> arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the

claimed invention, then the cited reference fails to anticipate the claimed invention and, thus,

the claimed invention is distinguishable over the cited reference.

Claims 1-12 and 15-20 were rejected under 35 U.S.C. §102(e) as allegedly being

anticipated by Moon (U.S. Patent No. 6,970,902).

Independent claim 1 as amended recites, "receiving an end user request for an

interactive session with the end user," "identifying any application programs needed by the

end user to be launched in said interactive session" and "wherein the contract includes a

service level agreement with the end user . . .." Support can be found in the specification, for

example, on page 3 at line 30, page 4 at line 8-9, 16-17,23, 27, page 5 at line 14, page 6 at

line 12 and page 8 at line 34.

The Office Action cites Moon at column 3 at lines 64-66, column 4 at lines 5-11 and

46, and column 6 at lines 50-54 as allegedly teaching these features. However, Moon fails to

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teach these features. Instead, Moon teaches, "to configure" a router so that it may perform a "service." The router is configured from a "provisioning message [that contains] a set of configuration parameters, which include an amount of allocated processing resources [should the router ever receive a request to perform the service], a lifecycle policy [should the router ever receive a request to perform the service] and authorized credentials [should the router ever receive a request to perform for the service.] Column 3 at lines 64-66.

Moon discloses a "corresponding object" that sends a request to a "service broker" asking the "service broker" for a "lease" to use a "service." Columns 16-17. Moon discloses that the "service broker" locates the "service" on the configured router. Id. The "service broker" creates a "lease" for the "corresponding object." Id. The "service broker" gives the "lease" to the "corresponding object." In addition, the "service broker" gives an address to the "corresponding object." The address gives the location of the "service." Id.

Moon defines the "service" to be that which is "configured on and provided by routers." Column 3. The service may be, for example, a "command line interface," an "encapsulation" and or "addressing." Id. For example, the router is configured with a "command line interface." A network administrator may use the command line interface to further configure the router to forward messages destined for one address to another address. For instance, the router may perform the service of encapsulating the message and forwarding the message to the other address (for instance, the network administrator may configure the router to perform the well-known service of "port forwarding.")

Moon discloses that the "corresponding object" uses the address of the router and sends the "lease" to the router in a request for the router to perform the service according to the lease. Column 16. The lease contains "lease constraints." Columns 4 and 16. The "lease

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constraints" include a "percentage of the . . . service" needed by the "corresponding object" and "an amount of processing resources required to execute the percentage . . . ." Id. If the router can execute the service, it retrieves a "lifecycle policy" of the service from a "remote site" and "update[s] mobile objects" (for instance, stored on the router) which the router needs to execute the service should a "manifest [of mobile objects stored in a list on the router] not contain the correct versions [of the mobile objects, according to a comparison between the manifest and a list of mobile object' versions in the lease]." Column 4 at lines 5-11.

Moon discloses that the provisioning message's "life cycle policy" may include "extension authorization." The "life cycle policy" may be "transaction based" meaning that the "service may be used one time" or any "number of times." Alternatively, the life cycle may be "time based" meaning that the service may be used for "minutes, days, years, or any other suitable measure of time." Column 7.

Moon discloses that if adequate "resources were allocated during configuration" then the router obtains "the required mobile objects listed in the manifest" from a "remote site" and, for example, uses the mobile objects to execute the service. If the required "mobile object" cannot be executed on the router "due to insufficient processing resources" then the router attempt to distribute the job of performing the service to another router.

The Office Action equates the "provisioning message" taught by Moon in column 3 at lines 64-66 to the claimed feature, "receiving an end user request for an interactive session with the end user." However, Moon fails to teach that an end-user sends the provisioning message. For at least this reason, Moon fails not teach this feature. In addition, the provisioning message disclosed by Moon is not at all a request for an "interactive session

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with an end user." Instead, for example, the provisioning message disclosed by Moon essentially is instructions to a router which enable the router to perform a corresponding service. Therefore, the provisioning message disclosed by Moon is not a request for "an interactive session with an end user." In addition, a service is not an application (as suggested by the Office Action). Instead, a service is a list of functions. See, for example, Moon at column 3. For at least these reasons, Moon fails to teach this feature.

The Office Action equates configuring the router with the provisioning message as disclosed by Moon in column 3 at line 65 with the claimed feature "identifying any application programs for the end user to be launched in said interactive session." However, Moon fails to teach application programs for an end user and fails to teach an interactive session. Moon fails to teach an interactive session, let alone launching applications in an interactive session. Instead, Moon discloses checking a manifest of mobile objects versions (and their dependencies) needed to perform a service *after* the router determines whether its *prior* allocation of resources is adequate to perform the service. Second, a mobile object is a set of functions not an application as suggested by the Office Action. See column 3. Third, the request taught by Moon is from a "corresponding object" not from an end user. The "corresponding object" is computer code written according to object-oriented computer programming. For at least these reasons, Moon fails to teach this feature.

The Office Action equates updating mobile objects based on a manifest *after* the router determines that a service can be performed according to terms of an already-created lease (as taught by Moon in column 6 lines 50-54) with the claimed feature "determining resource requirements for said interactive session including processor network bandwidth, executables

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and files requirements." However, Moon fails to teach this feature. Moon fails to teach determining files requirements and the interactive session.

The Office Action equates the lease taught by Moon in column 4 at line 46 with the claimed feature "generating a contract for the interactive session specifying resource allocations and authorizations, wherein the contract includes a service level agreement with the end user." However, the lease of Moon does not includes an SLA with an end user. Instead, the lease is for determining resources needed to run a service based on lease constraints. Moon discloses that the resources needed by a corresponding object are determined *before* the router receives the request not after as suggested by the Office Action. Furthermore, Moon discloses that the service broker generates a lease that includes the already determined resources. Thus, the lease is for an object and does not include a contract or SLA with an end user.

The Office Action equates the verification by the router as to whether it can perform the service (via comparing configuration parameters from the provisioning message with the lease constraints assigned by the service broker) with the claimed feature "allocating resources for the interactive session in accordance with the service level agreement." However, Moon fails to teach this feature. First, as demonstrated, Moon fails to teach a service level agreement with an end user. Second, mobile objects are not applications as suggest by the Office Action. Third, a manifest is a list of mobile objects needed to perform a service and not, as suggested by the Office Action, a list of resources to launch applications (according to a service level agreement with an end user). In addition, Moon discloses that resources are made available to a router to perform a service according to a provisioning message. The allocation in Moon is therefore performed *before* any lease is ever created. In

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contrast, the claimed feature generates a service level agreement in response to a request. In addition, the lease in Moon is between two items of object-oriented programming code (for instance, between a "service broker" object and a "corresponding" object) and therefore is not a service leave agreement with an end user. For at least these reasons, Moon fails to teach this feature.

Independent claims 8 and 15 recite similar features as independent claim 1 and therefore Moon fails to teach independent claims 8 and 15 for similar reasons.

At least by virtue of their dependency upon independent claims 1, 8 and 15, Moon fails to teach the claimed features of dependent claims 2-7, 9-12, and 16-18. In addition, the rejection to dependent claim 19 and 20 is moot because the Applicants have cancelled dependent claims 19 and 20.

For at least the foregoing reasons, the Applicants respectfully submit that the Office Action fails to establish that independent claims 1, 8 and 15 and dependent claims 2-7, 9-12, and 16-18 are anticipated by Moon. Therefore, the Applicants respectfully request that the Examiner withdraw the rejection to independent claims 1, 8 and 15 and dependent claims 2-7, 9-12, and 16-18 and allow these claims.

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<u>Conclusion</u>

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: September 22, 2008   By

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